

AO 450 (Rev. 5/85) Judgment in a Civil Case

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

DR. ALAN DALE CLARK

JUDGMENT IN A CIVIL CASE

V.

MARY CAROLE BRAY CLARK

CASE NUMBER: CV190-02

___ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

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considered

X Decision by Court. This action came on for consideration the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that in accordance with the Order of this Court of December 10, 1992, the Order of the Bankruptcy Court of December 19, 1991 is hereby REINSTATED and ADOPTED as the Order of this Court.

December 10, 1992

HENRY R. CRUMLEY, JR.
Clerk

s/ Scarlett G. Collins
(By) Deputy Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

DR. ALAN DALE CLARK

Plaintiff

vs.

MARY CAROLE BRAY CLARK

Defendant

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* Filed
* U. S. District Court
* Dec. 10 1 45 PM '92
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* CIVIL ACTION
* CV 190-002
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O R D E R

Before the Court is the Bankruptcy Judge's January 29, 1992, Order and Recommendation ("O&R") in the captioned matter. The O&R vacates the Bankruptcy Court's December 19, 1991, Order concerning the proper classification of a certain obligation and recommends that this Court address a novel jurisdictional argument offered by Dr. Clark in opposition to Ms. Clark's Motion to Alter or Amend the December 19, 1991, Order. Because Ms. Clark's Motion to Alter or Amend is without merit, Dr. Clark's jurisdictional arguments are moot, and it is appropriate to reinstate the Bankruptcy Court's December 19, 1991, Order.

On December 19, 1991, the Bankruptcy Court entered an Order holding a certain obligation of Dr. Clark as one not in the nature of support. Ms. Clark filed a Motion to Alter or Amend that Order on grounds that the Bankruptcy Court

improperly concluded that her brief was untimely. In opposition, Dr. Clark responded that the court properly excluded Ms. Clark's brief and that, notwithstanding its merit, Ms. Clark's Motion should be dismissed because of a jurisdictional defect. Because of the novel issues raised by Dr. Clark's jurisdictional arguments, the Bankruptcy Court entered its O&R vacating its December 19, 1991, Order and recommending that this court ". . . withdraw the reference of this adversary proceeding pursuant to 28 U.S.C. 157(d) to determine whether there was jurisdiction in the district court to review . . . [the Bankruptcy Court's] order entered September 25, 1989."

The Bankruptcy Court's O&R provides a detailed analysis of Ms. Clark's arguments concerning the timeliness of her brief. Included in that analysis is a step-by-step calculation of the proper due date and the notation that Ms. Clark filed her brief four days beyond that date. The Bankruptcy Court's analysis is sound and reveals that Ms. Clark's Motion to Alter or Amend is meritless. Because Ms. Clark's Motion is meritless, Dr. Clark's jurisdictional argument, offered only as an alternative to his position that Ms. Clark's brief was excluded properly, is moot.

Accordingly, the REFERENCE OF THE CAPTIONED MATTER to the Bankruptcy Court is hereby WITHDRAWN pursuant to 28 U.S.C. §157(d). Ms. Clark's Motion to Alter or Amend is hereby DENIED. Also, it is hereby **ORDERED** that the Bankruptcy

Court's December 19, 1991, Order be REINSTATED and ADOPTED as the Order of this Court and that, in accordance with the terms of that order, the debt owed by Dr. Clark to Fidelity National under the terms of a divorce decree entered by the Superior Court of Fulton County, Georgia, is dischargeable. The Clerk is directed to enter judgment accordingly.

ORDER ENTERED at Augusta, Georgia, this 10th day of December, 1992.

DUDLEY H. BOWEN, JR.
UNITED STATES DISTRICT JUDGE